IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Mohan lal vs. Mahabir Prasad & ors.

S.B. Civil Second Appeal No.86/1985 under Section 100 C.P.C. against the judgment and decree dated 23.9.1984 passed by the learned Civil Judge, Churu in Civil Appeal No.95/1983.

Date of Order: November 10, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr.Sudesh Gupta for the appellant.

BY THE COURT:

Heard learned counsel for the appellant.

Brief facts of the case are that the plaintiff filed a suit for eviction of his tenants from the suit property which was let out to the defendants on 15.7.1964. The suit was filed on the ground of personal bonafide necessity of the plaintiff and, thereafter, it was also pleaded that plaintiff's two sons became major and they also can do the business, therefore, the suit property is required for the business of the plaintiff and his sons. The plaintiff's case was that he was doing business in the shop but that shop fell in the share of his brother. His brother

insisted for vacating the shop, therefore, the plaintiff vacated the shop and now the plaintiff wants to do the business in the shop which has been let out to the defendants. The defendants denied the allegations. The trial court framed issues. The plaintiff gave his own statement and produced witnesses P.W.1-Duli Chand and P.W.2 Jagannath and after the remand order passed by the appellate court, the plaintiff was again examined and he produced witnesses Duli Chand and Bali Mohd. The defendants Sita Ram and Mahaveer Prasad gave their statements and produced witnesses D.W.2 Ram Niwas, D.W.3 Mahaveer Prasad, D.W. Bal Chand, D.W.5 Megha Ram, D.W.6 Noor Mohd. and D.W.7 Laxmi Narain. The trial court after considering evidence of the parties held that the plaintiff proved need for the shop in dispute and the need is bonafide. The trial court also held that in case the suit property is not given to the plaintiff, the plaintiff will suffer greater hardship. However, the trial court passed the decree for eviction for part of the property which is permissible under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which provides for passing of the decree for part of the plaintiff's property in case need of the plaintiff can be satisfied by giving part of the property.

The judgment and decree of the trial court dated 12.11.1982 was challenged by the tenants. The appellate court reversed the judgment

and decree of the trial court and dismissed the suit of the plaintiff. The appellate court also dismissed the cross-objection filed by the plaintiff. Hence the landlord being aggrieved against the judgment and decree of the first appellate court dated 22.91984 has preferred this appeal.

Following substantial question of law was framed by this Court while admitting this appeal on 1.8.1985:-

> "Whether the decree for partial eviction cannot be passed for want of pleading on this point ?"

It appears from the judgment of the first appellate court that the first appellate court after considering all the facts in detail recorded the finding of fact that the plaintiff failed to prove his personal bonafide necessity for the suit shop and reversed the finding recorded by the trial court. The question of partial eviction arises in case where the personal bonafide necessity of the plaintiff is proved. When personal bonafide necessity of the plaintiff for the rented premises is proved then the court is required to look into the aspect whether the need of the plaintiff can be satisfied by evicting the tenants from the part of the premises. Unless the finding on issue of personal bonafide necessity is reversed by this Court in this second appeal, the issue as framed on 1.8.1985 is irrelevant because that issue will not arise.

The learned counsel for the appellant submits that this Court can frame substantial question of law at this stage also. According to the learned counsel for the appellant, the first appellate court committed serious illegality in reversing the finding on issue of personal bonafide necessity of the plaintiff. It is also submitted that the plaintiff was doing the business, is a proved fact, rather is an admitted fact. The plaintiff came up with the case that the shop in which he was doing business fell in the share of his brother and when his brother insisted the plaintiff, the plaintiff vacated the suit premises. Therefore, it cannot be said that the plaintiff's need is not bonafide. It is also submitted that the plaintiff's two sons became eligible to do the business with the plaintiff, therefore the need increased. According to the learned counsel for the appellant in the identical facts and circumstances in the case of M/s Usha Sales Ltd. vs. The District Judge, Dehradun and others (1979(1) All India Rent Control Journal 275), the Allahabad High Court upheld the judgment and decree passed by the Addl. Judge for eviction of the tenant.

I considered the submissions of the learned counsel for the appellant and perused the record also.

It is clear from the reasons given by the first appellate court

while deciding issue no.1 that the first appellate court carefully considered each and every fact of the case in detail and thereafter held that the plaintiff failed to prove that he handed over possession of the shop in which he was doing business to his brother. Rather the first appellate court found no preponderance of the probabilities in favour of the plaintiff because the properties were divided between the plaintiff and his brother in the year 1963, wheres the suit has been filed in the year 1972. Apart from it, the plaintiff's brother was not produced by the plaintiff to prove that the suit property was vacated by the plaintiff. In addition to above, from the evidence, the first appellate court reached to the conclusion that the plaintiff on earlier occasions also got the rented shop vacated and thereafter let out the shops on higher rent. It will be worthwhile to mention here that even the trial court at page 6 of the judgment dated 12.11.1982 observed that the plaintiff also has two shops near the shop in dispute and four shops in Chopra Bazar, though shops in Chopra Bazar are in possession of the tenants but the trial court also observed that the plaintiff got the two shops vacated and let them out. In these facts and circumstances, looking to the facts of the case, no substantial question of law, so far as issue of personal bonafide necessity of the plaintiff is concerned, arises in this appeal. Hence no new substantial question of law can be framed.

In view of the above finding of the first appellate court on issue of personal bonafide necessity, the substantial question of law framed by this Court on 1.8.1985 does not arise in this case.

In view of the above, I do not find any merit in this appeal and hence the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.